IN THE HIGH COURT OF JUDICATURE AT BOMBAY

A & V.A. J.

NOTICE OF MOTION NO. 1141 OF 2005

IN

ADM. SUIT **NO. 32 OF 2000**

Liverpool & London Steamship Protection
& Indemnity Association Ltd,. .. Plaintiff..

vs.

m.v. "Sea Success I"
& Anr. .. Defendants.

Mr. P.S. Pratap for Plaintiff.
Mr. Zarir Bharucha for Defendant No. 1.

CORAM : S.U.KAMDAR, J.

DATE : 16th June, 2005.

P.C.

. The present motion has been taken out for the appointment of Commissioner for recording evidence in the suit as also it has been prayed that the evidence of one witness namely Ms. Lynn Cook who is staying in Liverpool, United Kingdom be recorded on video conferencing. The affidavit in support of the application states that that the said witness is unable to come to India for recording her evidence because she is staying along with two minor

children. The present motion is taken out under Order 26 rule 5 of the CPC. The learned Advocate appearing for the defendant no. 1 opposes the present notice of motion and contends that this Court could not exercise discretionary jurisdiction under Order 26 rule 5 and appoint the Commissioner. In any event, he submits that the evidence should not be recorded by video conferencing. It has been contended in support of the argument that the demeanour of the witness is essential to be noted by the Court while examining the witness on evidence. In support of his contention he has relied upon the judgement of this Court in the case of I.C. Corporation v. Daewoo Corporation and others, reported in AIR 1990 Bombay 152 and Ramesh Siram Sane v. Bhagwandas Atmasingh reported in AIR 1972 AP 216 and has contended that this Court should not exercise jurisdiction to appoint the Commissioner for recording evidence and/or in any event the witness should not be examined on video conferencing.

2. The learned advocate appearing for the plaintiff in support of the present application has relied upon a judgment of the Apex Court in the case of State of Maharashtra vs. Dr. Praful B. Desai reported in (2003) 4 SCC 601 and has contended that the video conferencing is the effect of advancement of science and technology and with a view to do

expeditious justice it is necessary that the evidence be recorded by video conferencing as one of the witness is not able to travel to India and give evidence. The learned counsel for the plaintiff states that he is proposing to examine only the said witness as evidence in support of his case. I have perused the judgment of the Apex Court in the aforesaid case in State of Maharashtra (supra). On the perusal of the aforesaid judgment it is clear that the Apex Court has held that examining of a witness by video conferencing is permissible and that in the case where the witness is unable to attend the Court or unable to travel to India, this Court should lean in favour of advancement of science and technology and see to it that evidence is recorded expeditiously in the interest of justice by way of video conferencing. The Apex Court has also provided various safeguards in paragraph 26 of the said judgment. In my opinion, in view of the judgment of the Apex Court in the case of State of Maharashtra (supra) the view taken by the learned Single Judge of this Court in I.C. Corporation (supra) and view taken by Andhra Pradesh High Court in the case of Ramesh Siram Sane (supra) is no longer a good law and is deemed to be impliedly overruled. In view of the judgment of the Apex Court in the case of State of Maharashtra (supra), I pass the following order.

3. The notice is made absolute in terms of prayer clauses (a) and (b) on the following conditions.

1. That the witness will give evidence in the room provided by Indian High Commission and/or the Indian High Commission will depute an officer at the earmarked place where the evidence is conducted. The said officer will take precaution that nobody else except the witness is present in the said room during the course when the evidence is recorded on video conferencing.

2. In so far as India is concerned, I appoint Mr. Satish Shah, Advocate, to record evidence on video conferencing. The video conferencing facility will be made available by the plaintiff. If necessary, technical persons also will remain present during the course when evidence is recorded to assist the Commissioner. The video conferencing which is being recorded by the Commissioner and the tapes of the said video conferencing will be kept in a sealed envelope and filed in Court for the purpose of trial of the suit.

3. The plaintiff shall pay all cost, charges and expenses of the Commission. The fees of the Commissioner will be shared by both the parties.

4. The Commissioner is directed to complete the evidence on or before 15.7.2005 and file his report in Court.

4. Motion made absolute accordingly. There shall be no order as to costs. The defendant no. 1 is directed to complete inspection formalities. It is made clear that if inspection of any of the document is not given by the defendant no. 1 then defendant no. 1 shall not be allowed to rely upon the said documents during the course of evidence.